

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1997 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GOVIND JIVA DEFADA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioners
MR LR POOJARI, AGP.for Respondent No. 1
MR JD AJMERA for Respondent No. 3
SERVED BY AFFIX.-(R) for Respondent No. 4

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 04/04/2000

ORAL JUDGEMENT

This petition under Article 227 of the Constitution of India arises out of the order dated

11/2/1985 passed by the Collector, Amreli regularising the petitioners' possession of the land in question on the condition stated in the order.

The petitioners are Harijans residing at village Bagasara, Taluka Jadia, District Amreli. They were landless persons and according to them they started making use of the gauchar land since 1970-71. In all they occupied 14 acres out of 75 acres of land. The Mamlatdar initiated proceedings under section 61 of the Bombay Land Revenue Code and ordered removal of encroachment and the same was confirmed by the Gujarat Revenue Tribunal in Appeal on 18.6.1975. However, relying on the Government Resolution dated 8.1.1980 for regularising such unauthorised possession, the petitioner made application to the Collector in July, 1984 to regularise their possession on the terms provided in the said resolution. The Collector after going through the favourable opinion given by the Mamlatdar observed that the Nagar Panchayat had failed to look after the gauchar land and that Nagar Panchayat had passed a resolution to return gauchar land to the Government for which certain proceedings were going on. He also referred to the fact that the petitioners had incurred considerable expenditure in improving the land. He, therefore, by his order dated 11.2.1985 regularised the petitioners' possession of the land in question on the terms stated in the said order. Bagasara Nagar Panchayat being aggrieved by the said order filed Revision Application No. 477 of 1985 before the Secretary, Revenue (Appeals). The petitioners were joined as respondents to the said revision application. It appears that one Nathalal Mulshankar, President of Bagasara Vibhagiya Ghetta Uchher Sahakari Mandali, respondent no.4 herein, also filed Revision Application No. 439 of 1985 before the Secretary. However, the petitioners were not joined as respondents to the said revision application. The order passed in the revision application filed by the respondent no.4 is at Annexure "D", which bears the date 8.2.1988. By the said order the Secretary allowed the revision application for the reasons stated in the order. The order passed in the revision filed by Bagasara Nagar Panchayat is at Annexure "C", which bears the date 4.4.1988. The order is identical to the order made in the revision application filed by the respondent no.4. In the order it is stated that the hearing was fixed on 23.4.1987 but the opponent was not present. However, the petitioners were not joined as opponents in the revision application filed by the respondent no.4. In both the orders it is stated that the orders were pronounced in open Court on 15.12.1987. The petitioners have averred

in the petition that they had remained present before the Secretary, (Appeals), Rajkot and they engaged Shri B.H.Gandhi as their Advocate and they had submitted their written reply. According to them, the Secretary had noted their presence and asked certain questions. However, they were not aware of the revision application filed by respondent no.4. Thus, it appears that though, according to the petitioners, they had remained present the Secretary noted that on the date of hearing otherside was not present and he has not referred to any submission made on behalf of the petitioners. The petitioners' averment that they were not aware of the revision application filed by the respondent no. 4 has remained uncontroverted. Thus the petitioners were not given proper opportunity to put their case in answer to the revision application filed by the respondent nos. 3 and 4.

The petition is therefore, allowed and the order passed by the Additional Chief Secretary (Appeals) Revenue, (Annexures 'C' and 'D') in Revision Application Nos. 477/85 and 439/85 are set aside and the Secretary (Appeals), Revenue, is directed to decide the said revision application afresh after giving opportunity of hearing to the parties concerned including the present petitioners. Rule made absolute accordingly. No order as to costs.

--

m.m.bhatt